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March 25, 2014

Via Email and Overnight Mail

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Re: Comments on the Initial Study/Mitigated Negative Declaration for the Aries Adelanto Solar Project (LDP 13-05 and CUP 13-04)

Dear Mr. de Manincor:

We write on behalf of **Coalition for Responsible Solar** to provide comments on the Initial Study/Mitigated Negative Declaration (“MND”) prepared by the City of Adelanto for the Aries Adelanto Solar Project (“Project”) proposed by Aries Solar Holdings, LLC. The Project is a 27-megawatt (“MW”) photovoltaic (“PV”) solar energy generation facility on approximately 206 acres in the City of Adelanto. The Project would be constructed in two phases. Phase one is 20 MW on 155 acres of the Project site and phase two is 7 MW on 51 acres of the Project site. Project components include a solar field of PV panels mounted on steel and aluminum structures supported by pile-driven foundation design, an electric collection system, concrete foundations, a substation, a 1.6-mile gen-tie line between the Project substation and the Southern California Edison Victor substation, roads and fencing, among other Project components.

Based upon our review of the MND and supporting documentation, we conclude that the MND fails to comply with the California Environmental Quality Act¹ (“CEQA”). The MND fails to provide a complete and accurate Project description and fails to set forth an accurate and documented description of the environmental setting against which to measure the Project’s potentially significant

¹ Pub. Resources Code §§ 21000 et seq.
3044-003cv

March 25, 2014

Page 2

impacts. As a result and for other reasons, the MND fails to identify the Project's potentially significant environmental impacts and propose measures that can reduce those impacts to a less than significant level.

As explained in these comments, there is more than a fair argument that the Project will result in potentially significant direct and indirect impacts from hazardous materials and on public health, biological resources and land uses. The City may not approve a Location and Development Plan or Conditional Use Permit ("CUP") for the Project until it prepares an Environmental Impact Report ("EIR") that adequately analyzes the Project's potentially significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts.

We prepared these comments with the assistance of biologist Scott Cashen and hazardous materials expert Matt Hagemann. Mr. Cashen's and Mr. Hagemann's technical comments on the MND and qualifications are attached and submitted to the City, in addition to the comments in this letter. The City must address and respond to the comments of Mr. Cashen and Mr. Hagemann separately.

I. STATEMENT OF INTEREST

Coalition for Responsible Solar is a coalition of individuals and labor unions that may be affected by the potential health and safety hazards and environmental impacts of the Project. The coalition includes Victorville area residents and California Unions for Reliable Energy ("CURE") and its members and their families (collectively, "Coalition"). The Coalition was formed to advocate for responsible and sustainable solar development in the Victorville area and San Bernardino County in order to protect public health and safety and the environment where the Coalition members and their families live, work and recreate.

CURE is a coalition of labor unions that encourages sustainable development of California's energy and natural resources. Environmental degradation destroys cultural and wildlife areas, consumes limited fresh water resources, causes air and water pollution, and imposes other stresses on the environmental carrying capacity of the State. This in turn jeopardizes future development by causing construction moratoriums and otherwise reducing future employment opportunities for CURE's members. Additionally, union members live, recreate and work in the communities and regions that suffer the impacts of projects that are detrimental to human health and the environment. CURE therefore has a direct interest in enforcing

environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment. Finally, CURE members are concerned about projects that risk serious environmental harm without providing countervailing economic benefits.

II. THE MND FAILS TO ADEQUATELY DESCRIBE THE PROJECT

The MND does not meet CEQA's requirements because it fails to include a complete and accurate project description, rendering the entire impact analysis inherently unreliable. An accurate and complete project description is necessary to perform an evaluation of the potential environmental effects of a proposed project.² Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.³ The courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."⁴ Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal's benefit against its environmental costs.⁵

A. The MND Fails to Adequately Describe the Project's Internal Roads

The MND states the Project would include an internal roadway system of "perimeter roads surrounding the facility, as well as a network of 20-foot wide dirt roads."⁶ However, the MND provides no further details regarding the internal roads, such as length or depth of these roads. The City must provide more detailed information regarding the Project's internal roads. There is no way to effectively evaluate impacts from roadways of unknown lengths or depths. The City must revise its description of the Project's internal roads in an EIR so that the public and decision makers can assess the Project's impacts on the environment, as well as the Project's compliance with all City rules and regulations.

² See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

³ See *id.*

⁴ *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

⁵ *Id.* at 192-193.

⁶ MND, p. 5.

B. The MND Fails to Describe the Amount of Grading Required for the Project

The MND does not describe, with any specificity, how much grading would occur. The MND merely states “[m]inimal site grading would occur on the project site.”⁷ Another document, the Adelanto Solar Project - Project Description states that Project grading activities “will be limited to approximately 37 acres.”⁸ However, even that description does not provide the volume of soil that will be disturbed by grading, which is highly relevant to measuring the range and severity of Project impacts, including, but not limited to, impacts to air quality, soils, biological and hydrological resources, worker and public health and safety, and water supply. The City must describe the amount of grading in greater detail so that the Project’s impacts can be reasonably and accurately measured.

C. The MND Fails to Adequately Describe Project Decommissioning

CEQA mandates that lead agencies must include in a project description the “whole of an action” which is being approved, including *all* components and future activities that are reasonably anticipated to become part of the project.⁹ This includes, but is not limited to, “later phases of the project, and any secondary, support, or off-site features necessary for its implementation.”¹⁰ The requirements of CEQA cannot be avoided by chopping a large project into many little ones or by excluding reasonably foreseeable future activities that may become part of the project.¹¹ The City, as the lead agency, must fully analyze the whole of the project in a single environmental review document and may not piecemeal or split the project into pieces for purposes of analysis. Yet, the MND fails to describe the full scope of the Project being approved, and thus fails to disclose the full range and severity of the Project’s environmental impacts. The public and decision makers have this, and only this, opportunity to comment on the Project. For this reason, every phase of the project must be assessed with the same level of specific details. Anything less violates CEQA.

⁷ *Id.*

⁸ Adelanto Solar Project - Project Description, p. 11.

⁹ 14 Cal. Code Regs (“CEQA Guidelines”) §15378 (emphasis added).

¹⁰ *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-84.

¹¹ Pub. Resources Code § 21159.27 (prohibiting piecemealing); *see also, Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 370.

In this case, the City failed to include Project decommissioning as part of the Project. The Project would be operational for 30 years and has three distinct phases: construction, operation/maintenance and decommissioning. The decommissioning phase consists of removing all Project structures and restoring the 206-acre Project site. These decommissioning activities are a part of the “whole of the project” and, as a matter of common sense, will result in environmental impacts, including, but not limited to, impacts to air quality, biological resources, water and solid waste capacity. The MND, however, completely fails to describe decommissioning and, as a result, fails to adequately disclose, analyze and mitigate potentially significant impacts. The City must prepare an EIR that describes and analyzes Project decommissioning.

D. The MND Fails to Adequately Describe Project Waste

The MND states that the Project will result in less than significant impacts related to landfill capacity and solid waste disposal.¹² According to the MND,

While the construction period may generate some solid waste, County Solid Waste Management requires a Construction and Demolition Waste Reduction and Recycling Plan outlining materials to be diverted from landfill disposal for reuse and recycling. Those solid wastes not diverted would be disposed of at the Victorville Sanitary Landfill. No long-term generation of solid waste and no long-term increases in waste sent to the landfill are attributable to the proposed project. Thus, impacts would be less than significant.¹³

The MND’s description of the Project’s waste generation is incomplete and, therefore, the MND’s conclusion that the Project would not result in a significant impact on landfill capacity and solid waste disposal is unsupported.

First, the MND fails to describe waste that would be generated during Project construction. The MND only states that Project construction “may generate some solid waste.”¹⁴ The MND fails to describe what and how much waste would be generated during Project construction, such as waste from solar panel packaging and packaging from other Project components, such as the tracking systems’ motors

¹² MND, p. 76.

¹³ *Id.*

¹⁴ *Id.*

and control systems, among other components.

Second, the MND completely fails to describe waste that would be generated from Project decommissioning, such as waste from the solar panels and support systems, concrete foundations, fencing, the substation and interconnection equipment, among other decommissioning waste.

The MND fails to adequately describe Project waste. Thus, there is no support for the City's statement that waste disposal impacts would be less than significant. Instead, there is a fair argument that the Project may significantly impact waste disposal. The City must prepare an EIR that fully describes Project waste and waste disposal.

III. THE MND FAILS TO ADEQUATELY DESCRIBE THE EXISTING ENVIRONMENTAL SETTING

An MND must include a description of a project's environmental setting.¹⁵ The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts.¹⁶ As a general matter, the MND must also "disclose the data or evidence upon which person(s) conducting the study relied. Mere conclusions simply provide no vehicle for judicial review."¹⁷ The MND is inadequate because its description of the environmental setting with respect to biological resources, public health hazards, hazardous materials and waste disposal is incomplete.

A. The Description of the Environmental Setting for Biological Resources is Incomplete

1. *The MND Fails to Adequately Describe the Environmental Setting Against Which to Measure the Project's Impacts on Special Status Plants*

According to the MND, the Project site has the potential to support special-status plant species.¹⁸ Plant surveys were conducted for the Project during the

¹⁵ CEQA Guidelines §15063(d)(2).

¹⁶ *Id.*, §15125(a).

¹⁷ *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

¹⁸ MND, p. 31. *See also* Tetra Tech Inc. 2013 Jul. Desert Tortoise Survey and General Biological 3044-003cv

spring of 2013. However, because precipitation was well below average during the winter of 2012 to 2013, and there was virtually no germination of annuals and herbaceous perennials during the spring of 2013,¹⁹ the applicant's biologists concluded "there was little likelihood of observing any populations of special-status herbaceous species that might grow on the site."²⁰

Another expert biologist, Scott Cashen, concurs that the timing of the applicant's studies was inadequate to set forth the existing conditions on the Project site. Mr. Cashen explains in his attached comments, "data from appropriately timed, focused botanical surveys are required to fully assess existing conditions, analyze Project impacts, and formulate appropriate mitigation."²¹ Data from appropriately timed surveys must be included in an EIR that is circulated for public review and comment. The City must prepare an EIR that adequately discloses the environmental setting against which to measure the Project's impacts on special-status plants.

2. *The MND Fails to Adequately Describe the Environmental Setting Against Which to Measure the Project's Impacts on Sensitive Vegetation Communities*

The MND fails to adequately describe special-status vegetation communities on the Project site. The site for phase one of the Project contains Fremont cottonwood woodlands, which the California Department of Fish and Wildlife ("CDFW") classified as a special-status natural community.²² Because the MND fails to describe these species as part of the existing setting, the MND also completely fails to disclose, analyze or mitigate the Project's potentially significant impacts to this special-status natural community. The City must prepare an EIR that adequately describes the existing Fremont cottonwood woodlands on the Project site in order to measure the Project's impacts on this sensitive vegetation community.

Resources Assessment for the Adelanto Solar Project San Bernardino County, CA. Table 2.

¹⁹ Tetra Tech Inc. 2013 Jul. Desert Tortoise Survey and General Biological Resources Assessment for the Adelanto Solar Project San Bernardino County, CA. p. 12.

²⁰ *Id.*

²¹ **Attachment A:** Letter from Scott Cashen to Rachael Koss re: Comments on the Initial Study and Mitigated Negative Declaration Prepared for the Adelanto Aries Solar Project, March 6, 2014, p. 2.

²² *Id.*

B. The MND Fails to Disclose that Project Site Soils May Contain *Coccidioides immitis*

The MND's discussion of the Project's environmental setting is inadequate because it completely fails to address the potential presence of *Coccidioides immitis*, a fungus which causes Coccidioidomycosis, commonly known as Valley Fever, in the Project soils. Valley Fever is an infectious disease caused by inhaling the spores of *C. immitis*, which are released when infected soils are disturbed, for example by construction activities, agricultural operations, dust storms or earthquakes.²³ The disease is endemic in the semiarid regions of the southwestern United States.²⁴ From 1990 to 2008, more than 3,000 people died in the United States from Valley Fever, half of whom lived in California.²⁵ Recently, reported Valley Fever cases in the Southwest increased dramatically.²⁶ The disease is endemic to San Bernardino County and, therefore, the City should have addressed the potential presence of *C. immitis* spores on the Project site. This information is relevant to the Project's potentially significant impacts and must be included as part of the description of the existing setting in an EIR.

C. The Description of the Environmental Setting for Hazardous Materials is Incomplete

The MND provides inconsistent, inadequate and unsupported information regarding the presence of hazardous materials present on the Project site. The Hazards and Hazardous Materials section of the MND states "[t]here are a number of trash piles and OHV trails south of the project site. Those who have visited the site, whether a project representatives or consultants, have reported no spills of chemicals or oils."²⁷ However, the Cultural Resources section of the MND states "[t]his network of dirt roads provides easy access for off highway vehicle recreation and illegal dumping of residential and commercial waste. The entire area is littered with modern domestic trash (e.g. food products, furniture, clothing, etc.) and commercial trash (e.g. used oil, bundled yard waste, construction materials, etc.)."²⁸ These statements conflict. As hazardous materials expert, Matt Hagemann,

²³ **Attachment B:** Letter from Matt Hagemann to Rachael Koss re: Comments on the Aries Solar Project, March 6, 2014, p. 3.

²⁴ *Id.*, pp. 3-4.

²⁵ *Id.*, p. 4.

²⁶ *Id.*

²⁷ MND, p. 58.

²⁸ *Id.*, p. 39.

explains in his comments, used oil may have contaminated underlying soil with petroleum hydrocarbons.²⁹ Mr. Hagemann also explains that other materials in the trash piles, such as discarded household chemicals, car batteries and construction or demolition material that may contain lead or asbestos, may have resulted in the release of hazardous chemical into soil.³⁰

In order to properly disclose whether hazardous materials existing in the environmental setting, a Phase I Environmental Site Assessment (“ESA”) should be prepared. Mr. Hagemann explains that a Phase I ESA is used to establish the environmental setting against which to evaluate a project’s potentially significant impacts from hazards and hazardous materials.³¹ A Phase I ESA identifies the presence, or potential release, of hazardous substances in the ground, groundwater or surface water of a property.³² These hazardous substances are called “recognized environmental conditions” or “RECs.” A Phase I ESA is crucial to evaluating a Project’s potentially significant impacts as a result of RECs present on the Project site.³³

Here, a Phase I ESA was not conducted for the Project. Therefore, it is impossible to determine the extent of the Project’s potentially significant impacts from the presence of RECs on the Project site. The MND states that the Project will not result in significant impacts from hazards or hazardous materials.³⁴ Without a Phase I ESA, the MND’s conclusion is completely unsupported.

D. The MND Fails to Adequately Describe the Existing Environmental Setting for Waste Disposal

The MND states that the Project will result in less than significant impacts related to landfill capacity and solid waste disposal.³⁵ According to the MND,

While the construction period may generate some solid waste, County Solid Waste Management requires a Construction and Demolition Waste Reduction and Recycling Plan outlining materials to be diverted from landfill

²⁹ Attachment B, p. 2.

³⁰ *Id.*

³¹ *Id.*, p. 1.

³² *Id.*, pp. 1-2.

³³ *Id.*

³⁴ MND, p. 58.

³⁵ *Id.*, p. 76.

disposal for reuse and recycling. Those solid wastes not diverted would be disposed of at the Victorville Sanitary Landfill. No long-term generation of solid waste and no long-term increases in waste sent to the landfill are attributable to the proposed project. Thus, impacts would be less than significant.³⁶

The MND fails to describe the facility that will process recyclable materials. Further, there is no evidence that the Victorville Sanitary Landfill has the capacity to dispose of Project waste, particularly from decommissioning, which would include PV panels, tracking systems made of steel and concrete, metal, scrap equipment and parts, oil and lubricants, and fencing, among other things, and would occur 30 years from now.

The MND fails to describe the facility that will process recyclable materials and fails to describe the capacity of the Victorville Sanitary Landfill, which would receive the Project's waste. Without this baseline information, it is impossible for the decision makers and the public to evaluate the Project's potential impacts. The City must prepare an EIR that fully describes waste disposal and recycling facilities for the Project.

IV. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS REQUIRING THE CITY TO PREPARE AN ENVIRONMENTAL IMPACT REPORT TO COMPLY WITH CEQA

CEQA has two basic purposes, neither of which the MND satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.³⁷ CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.³⁸ The purpose of the EIR is to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government.”³⁹ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the

³⁶ *Id.*

³⁷ CEQA Guidelines § 15002(a)(1).

³⁸ *See* Pub. Resources Code § 21000; CEQA Guidelines § 15002.

³⁹ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).
3044-003cv

public and its responsible officials to environmental changes before they have reached ecological points of no return.”⁴⁰

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.⁴¹ The EIR serves to provide public agencies and the public in general, with information about the effect that a proposed project is likely to have on the environment, and to “identify ways that environmental damage can be avoided or significantly reduced.”⁴² If a project has a significant effect on the environment, the agency may approve the project only upon a finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible,” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA section 21081.⁴³ The MND fails to satisfy the basic purposes of CEQA by failing to inform the public and decision makers of the Project’s potentially significant impacts and to propose mitigation measures that can reduce those impacts to a less-than-significant level. The City is required to evaluate the Project in an EIR.

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.⁴⁴ CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard. Under that standard, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.⁴⁵ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration or

⁴⁰ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁴¹ CEQA Guidelines § 15002(a)(2)-(3); *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1354.

⁴² CEQA Guidelines § 15002(a)(2).

⁴³ *Id.*; CEQA Guidelines § 15092(b)(2)(A)-(B).

⁴⁴ *See* Pub. Resources Code § 21100.

⁴⁵ Pub. Resources Code § 21082.2; CEQA Guidelines § 15064(f), (h); *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

notices of exemption from CEQA.⁴⁶ An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁴⁷

A mitigated negative declaration may be prepared instead of an EIR only when, after preparing an Initial Study, a lead agency determines that a project may have a significant effect on the environment, but:

- (1) Revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where *clearly no significant effect* on the environment would occur; and
- (2) There is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.⁴⁸

Substantial evidence can be provided by technical experts or members of the public.⁴⁹ "If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect."⁵⁰ The CEQA Guidelines provides that "if there is disagreement among expert opinion supported by facts over the significance

⁴⁶ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁴⁷ *Sierra Club v. County of Sonoma*, (1992) 6 Cal.App.4th, 1307, 1318; *see also Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 ["If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an [environmental impact report] and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact"].

⁴⁸ Pub. Resources Code § 21064.5.

⁴⁹ *See, e.g., Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 [substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy]; *see also Architectural Heritage Ass'n v. County of Monterey*, 122 Cal.App.4th 1095, 1117-1118 [substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing]; *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

⁵⁰ CEQA Guidelines § 15062(f).

of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.”⁵¹

As detailed in the following sections, there is a fair argument, supported by substantial evidence, that the Project may result in significant impacts from hazardous materials and on public health, land use and biological resources. Therefore, the City is required to prepare an EIR to evaluate the Project’s impacts and propose all mitigation measures that are necessary to reduce those impacts to a less-than-significant level.

A. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Public Health Impacts from Valley Fever

The Project may result in significant adverse public health impacts to construction workers, adjacent residents and the public from Valley Fever. In his comments, Mr. Hagemann explains that Valley Fever is endemic to arid regions, including San Bernardino County.⁵² Mr. Hagemann also explains that the incidence of Valley Fever has been linked to construction of large-scale solar projects in the desert.⁵³ Valley Fever is caused by inhaling *C. immitis* spores which are spread through disturbed dust particles or soil disturbance, such as excavation and grading activities.⁵⁴ The Kern County Public Health Services Department found that *C. immitis* often occurs in the soil in areas with many animal burrows, prehistoric Indian campsites, areas with sparse vegetation, next to arroyos, areas with packrat middens, where the upper 12 inches of soil is undisturbed and in areas with sandy, well-aerated soil.⁵⁵ As Mr. Hagemann explains, “*Coccidioides* spores are small and have low terminal velocity and, therefore, have slow settling rates. Thus, these spores can remain aloft for long periods and can be carried hundreds of kilometers.”⁵⁶

Project construction involves disturbing 206 acres of soil with grading and construction of roads. Thus, construction workers, nearby residents and the public

⁵¹ *Id.*, § 15062(g).

⁵² **Attachment B**, p. 4.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

are at risk for contracting Valley Fever.⁵⁷ Despite this, the MND completely fails to disclose, analyze or mitigate the Project's potentially significant public health impacts associated with Valley Fever.

There is a fair argument based on substantial evidence that the Project may result in potentially significant impacts to construction workers, residents and the public from Valley Fever. Absent appropriate mitigation, the Project may result in significant adverse public health impacts. CEQA requires the City to evaluate this impact and propose all feasible mitigation measures necessary to reduce this impact to a less-than-significant level in an EIR. To mitigate the Project's potentially significant impacts from Valley Fever, Mr. Hagemann recommends numerous measures developed by several agencies (including the California Department of Public Health, the California Department of Industrial Relations, the Kern County Public Health Services Department and the San Luis Obispo County Public Health Department) and based on scientific studies.⁵⁸ These measures should be included in an EIR for the Project.

B. Substantial Evidence Supports a Fair Argument That the Project May Result in Significant Impacts to Biological Resources

1. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to Burrowing Owls

The MND fails to adequately disclose, analyze or mitigate the Project's significant impacts to burrowing owls. The MND concludes that the Project's impacts on burrowing owls would be mitigated to a less-than-significant level. The MND's conclusion is unsupported and substantial evidence supports a fair argument that the Project would result in significant impacts to burrowing owls.

The MND states, "[b]ecause there is similar quality foraging and nesting habitat present in the surrounding area, and because owls in the area were observed toleration [sic] extensive human disturbance, the loss of habitat due to project development is not considered to have a substantial adverse impact."⁵⁹ In his comments, Mr. Cashen explains that the MND's conclusion is baseless for two

⁵⁷ *Id.*

⁵⁸ *Id.*, pp. 5-7.

⁵⁹ MND, pp. 33-34.

reasons.

First, there is no evidence that “there is similar quality foraging and nesting habitat present in the surrounding area.” As Cashen explains, inferences regarding habitat value “require consideration of the many biotic and abiotic factors that may influence organism abundance.”⁶⁰ Cashen describes the key to habitat evaluation -- determining limiting agents in species abundance, “because habitat by itself does not guarantee long-term fitness of individuals and viability of populations.”⁶¹ Research suggests that limiting agents for burrowing owls include burrow availability, prey availability, and predation.⁶² There is no evidence that the City considered these variables and, therefore, there is no support for its assumptions regarding habitat value in the areas surrounding the Project site.

Second, the Project would significantly impact burrowing owls by eliminating 145 acres of burrowing owl nesting and foraging habitat. In his comments, Cashen explains that habitat loss, degradation and fragmentation are the greatest threats to burrowing owls in California.⁶³ As Cashen points out, the CDFW’s 2012 Staff Report on Burrowing Owl Mitigation states:

The current scientific literature supports the conclusion that mitigation for permanent habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates, presence of fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow.⁶⁴

The MND fails to disclose, analyze or mitigate the Project’s potentially significant impacts to burrowing owls from habitat loss.

The Project’s impacts on burrowing owls also remain potentially significant because the proposed mitigation – a pre-construction survey, buffers around nests and a relocation plan – are inadequate and may also result in their own significant impacts to the species.

⁶⁰ Attachment A, p. 3.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*, pp. 3-4, citing CDFW Staff Report on Burrowing Owl Mitigation, p. 8.

a. The Proposed Pre-construction Survey Will Not Reduce the Project's Impacts on Burrowing Owls to a Less Than Significant Level

The MND requires a pre-construction survey for burrowing owls “no *less than* 14 days prior to site grading to detect owls using the site at the time of construction.”⁶⁵ As Mr. Cashen explains, the timing of the proposed pre-construction survey is inconsistent with CDFW guidelines, which recommend an initial pre-construction survey no *more than* 14 days prior to ground disturbance.⁶⁶ CDFW guidelines also recommend an additional survey within 24 hours of ground disturbance.⁶⁷ The timing of pre-construction surveys is crucial because “burrowing owls may re-colonize a site after only a few days.”⁶⁸ Therefore, Mr. Cashen concludes that “a single pre-construction survey at least 14 days in advance of construction is insufficient to avoid and minimize take of burrowing owls.”⁶⁹

b. The Proposed Buffers Will Not Reduce the Project's Impacts on Burrowing Owls to a Less Than Significant Level

The MND requires non-disturbance buffers around any active burrowing owl nests in construction areas.⁷⁰ However, the MND fails to identify the buffer size. As a result, there is no evidence to support the conclusion that buffers would reduce the Project's impacts on burrowing owls to a less-than-significant level. Cashen explains that the measure should be revised to reflect CDFW guidelines, which indicate buffers may need to be up to 500 meters, depending on the time of year and level of disturbance.⁷¹

⁶⁵ MND, p. 34 (emphasis added).

⁶⁶ Attachment A, p. 8.

⁶⁷ *Id.*

⁶⁸ *Id.*, quoting CDFW's 2012 Staff Report on Burrowing Owls, p. 30.

⁶⁹ *Id.*

⁷⁰ MND, p. 34.

⁷¹ Attachment A, p. 8.

c. The Proposed Relocation and Mitigation Plan Will Not Reduce the Project's Impacts on Burrowing Owls to a Less Than Significant Level

The MND states, “[i]f owls are present and cannot be avoided, a relocation and mitigation plan *may* be developed to avoid and minimize impacts to onsite owls.”⁷² However, the MND does not *require* that a plan be developed and fails to describe the circumstances under which a plan may be developed. The MND also completely fails to include basic details associated with a plan, such as relocation methods. Therefore, Cashen concludes that the Project’s impacts to burrowing owls remain significant and unmitigated.⁷³

It is imperative that a burrowing owl relocation and mitigation plan be included in an EIR that is circulated for public review and comment because, according to CDFW, passive relocation of burrowing owls creates potentially significant impacts under CEQA that must be analyzed and mitigated.⁷⁴ According to the CDFW, temporary or permanent closure of burrows may cause: (a) significant loss of burrows and habitat from reproduction and other life history requirements; (b) increased stress on owls and reduced reproductive rates; (c) increased depredation; (d) increased energetic costs; and (e) risks posed by having to find and compete for available burrows.⁷⁵ The MND fails to disclose, analyze or mitigate the Project’s impacts to burrowing owls from passive relocation.

Substantial evidence supports a fair argument that the Project may result in significant unmitigated impacts to burrowing owls. The City must prepare an EIR that adequately discloses, analyzes and mitigates these impacts.

2. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to the Habitat of Numerous Species*

The Project would directly impact two sensitive natural communities (Fremont Cottonwood Woodland and Joshua Tree Woodland) and 145 acres of habitat occupied by the burrowing owl, loggerhead shrike and, potentially, special-

⁷² MND, p. 34 (emphasis added).

⁷³ **Attachment A**, p. 8.

⁷⁴ California Department of Fish and Game. 2012. Page 10 *In: Staff Report on Burrowing Owl Mitigation*. Available at: <www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf>.

⁷⁵ *Id.*

status plants. In addition, the Project site provides suitable habitat for the desert tortoise and Mohave ground squirrel.⁷⁶ The MND concludes that “[a]dherence with mitigation measures will reduce impacts for loss of potential habitat to less than significant.”⁷⁷ There is no support for the MND’s conclusion because the MND does not require the Applicant to provide any compensatory mitigation for habitat loss. Therefore, the Project’s impacts to habitat for several species remain significant and unmitigated.⁷⁸

3. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts from the Spread of Invasive Plants*

Invasive weeds disrupt ecosystem processes and degrade habitat for native plants and animals.⁷⁹ In his comments, Mr. Cashen explains that Project vehicles and crews could track clinging seeds and/or parts of noxious weeds onto the Project site.⁸⁰ Further, weed species will benefit from disturbance of the Project site and will readily colonize the site.⁸¹ Therefore, Mr. Cashen concludes that the Project has the potential to introduce invasive plant species and/or facilitate their spread in the Project area.⁸² The MND fails to disclose, analyze or mitigate this potentially significant impact.

To mitigate this impact, Mr. Cashen explains that the City must identify the following:

1. The measures that will be implemented to prevent weed species from being introduced to the Project sites (e.g., equipment washing);
2. The weed species that will be subject to weed management measures, and the management objectives for each species (e.g., eradication versus control);

⁷⁶ Attachment A, p. 4.

⁷⁷ MND, p. 78.

⁷⁸ Attachment A, p. 4.

⁷⁹ *Id.*, p. 9.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

3. Where weed management and monitoring measures will be implemented, including the extent of a buffer zone surrounding the Project footprint;
4. The timing, frequency and duration of the suite of weed management measures that might be implemented for the Project;
5. The methods (including the timing, frequency and duration) for weed monitoring efforts at the Project site;
6. Success criteria for the weed mitigation program; and
7. The reporting requirements and enforcement mechanism.⁸³

Substantial evidence supports a fair argument that the Project may result in significant impacts from the spread of invasive plants. The City must prepare an EIR that discloses, analyzes and mitigates these significant impacts.

4. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to Birds from Collisions and Barbed Wire*

Substantial evidence supports a fair argument that the Project may result in significant impacts associated with birds colliding with the Project's PV panels and barbed wire. The MND fails to disclose, analyze or mitigate these impacts.

First, the Project's PV panels pose a threat to birds that must be disclosed, evaluated and mitigated in an EIR. While the reasons that solar pose a threat to birds and the extent of the threat continue to be evaluated, the presence of dead and injured birds (including numerous water birds) at solar facilities under construction in California shows that solar arrays present a collision hazard to birds.⁸⁴ It is reasonably believed that migrating birds mistake the broad reflective surfaces of solar arrays for water.⁸⁵

Because solar projects pose potentially significant impacts to birds from collisions, the United States Fish and Wildlife Service ("USFWS") developed monitoring methods to examine migratory bird take at solar power facilities.⁸⁶ In

⁸³ *Id.*

⁸⁴ *Id.*, pp. 4-5.

⁸⁵ *Id.*, p. 5.

⁸⁶ *Id.*

addition, the California Energy Commission (“CEC”) has required all recently licensed solar projects to monitor the death and injury of birds from collisions with solar facility features.⁸⁷ Also, scientific research has identified several techniques that enable birds to avoid collisions with glass and other reflective surfaces.⁸⁸ Mr. Cashen recommends that the City include these techniques, along with the monitoring program recommended by the USFWS and CEC, in an EIR for the Project as feasible mitigation measures to reduce the Project’s potentially significant impacts on birds from collisions.

Second, the Project’s barbed wire fence poses a threat to birds. Barbed-wire fencing is known to pose a mortality hazard to sensitive species that occur in the Project area, including the burrowing owl and prairie falcon.⁸⁹ Mr. Cashen recommends that the fence be designed to minimize hazards to wildlife. At a minimum, Cashen suggests that the top wire of the fence be smooth.⁹⁰

Substantial evidence supports a fair argument that the Project may result in significant impacts associated with birds colliding with the Project’s PV panels and barbed wire fencing. The City must prepare an EIR that adequately discloses, analyzes and mitigates the Project’s potentially significant impacts associated with bird collisions and barbed wire.

5. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to Desert Tortoise from Increased Raven Predation*

The MND completely fails to disclose, analyze or mitigate the Project’s impacts to desert tortoise from increased raven predation. In his comments, Cashen explains that the raven, a known predator of the desert tortoise, benefits from the construction of renewable energy facilities.⁹¹ The infrastructure and human activities associated with renewable energy facilities provide perch and nest sites, and subsidies of food and water for ravens.⁹² Accordingly, the USFWS concluded that renewable energy projects and associated transmission facilities should implement mitigation measures that reduce raven predation on desert

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*, p. 9.

⁹² *Id.*

tortoises at both the local and population levels.⁹³ Specifically, each applicant should: (1) develop an on-site plan to minimize availability of food sources and the potential for ravens to occupy the project site, and (2) make a financial contribution to the USFWS's regional raven management plan.⁹⁴ These feasible mitigation measures should be included in an EIR that is circulated for public review and comment.

6. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts from Soil Stabilizers*

According to the hydrology report prepared for the Project, soil stabilizers may be used on the Project site.⁹⁵ Cashen explains that the majority of soil stabilizers are made from waste products from the manufacturing industry and many contain chemicals that are toxic to plants and animals.⁹⁶ The application of soil stabilizers has caused the browning of trees along roadways and stunted vegetation growth in forestlands.⁹⁷ Soil stabilizers have also caused sickness and adverse effects on reproduction in terrestrial animals.⁹⁸ Mr. Cashen explains that any vegetation or fauna on the site may come into direct contact with and be significantly impacted by the Project's use of soil stabilizers.⁹⁹

Substantial evidence supports a fair argument that the Project may result in significant impacts to biological resources from the use of soil stabilizers on the Project site. The MND completely fails to disclose these impacts. The City must prepare an EIR that discloses, analyzes and mitigates potentially significant impacts to biological resources from the use of soil stabilizers on the Project site.

7. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to Botanical Resources*

The MND acknowledges the potential for the Project to significantly impact special-status plant species.¹⁰⁰ However, in Cashen's opinion, the proposed

⁹³ *Id.*, pp. 9-10.

⁹⁴ *Id.*, p. 10.

⁹⁵ Preliminary Hydrology and Stormwater Quality Report, Adelanto Solar Site, October 2013, p. 10.

⁹⁶ **Attachment A**, pp. 5-6.

⁹⁷ *Id.*, p. 6.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ MND, pp. 34-35.
3044-003ev

mitigation (redistributing native topsoil on temporarily disturbed areas along the distribution line route and limiting construction disturbance to only the area required for development) would not reduce the impacts to a less-than-significant level.¹⁰¹ Cashen explains that the proposed measures would not mitigate the direct loss of special-status plants and their habitat.¹⁰² As a result, the Project's impacts to special-status plants remain significant and unmitigated.

8. *Substantial Evidence Supports a Fair Argument that Project Decommissioning May Result in Significant Impacts to Biological Resources and Soil*

Mr. Cashen explains in his comments that sensitive biological resources may colonize or re-colonize the Project site prior to decommissioning.¹⁰³ Decommissioning activities may significantly impact sensitive species and their habitat through direct disturbance, creation of fugitive dust and the spread of invasive plants, among other impacts.¹⁰⁴ Thus, Mr. Cashen recommends that the City require pre-decommissioning surveys that adhere to CDFW and USFWS guidelines.¹⁰⁵

Project decommissioning may also significantly impact desert soils and vegetation. Mr. Cashen explains that desert vegetation and soil crusts can take hundreds, if not thousands, of years to recover from disturbance.¹⁰⁶ The MND fails to disclose, analyze or mitigate this potentially significant impact. Cashen states that the City must identify success criteria and monitoring activities for revegetation of the Project site following decommissioning.¹⁰⁷

Substantial evidence supports a fair argument that the Project may result in significant impacts to sensitive biological resources and soil from decommissioning. The MND completely fails to disclose this impact. The City must prepare an EIR that discloses, analyzes and mitigates potentially significant impacts to biological resources from Project decommissioning.

¹⁰¹ Attachment A, p. 7.

¹⁰² *Id.*

¹⁰³ *Id.*, p. 6.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

9. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Cumulative Impacts to Biological Resources*

The MND concludes that the Project would not contribute to cumulative impacts.¹⁰⁸ The MND's conclusion lacks any supporting evidence or analysis. As Cashen explains in his comments, the City must, at a minimum: (a) define the geographic scope of the area impacted by the cumulative effect and provide a reasonable explanation for the geographic scope; (b) provide a list of past, present and reasonably foreseeable future projects in the geographic scope; (c) provide a summary of expected environmental impacts from those projects; and (d) provide a reasonable analysis of the cumulative impacts of the projects, which is supported by substantial evidence.¹⁰⁹

The MND fails to define the geographic scope for its cumulative impacts analysis, fails to provide a list of past, present and reasonably foreseeable future projects, fails to provide a summary of expected impacts and fails to provide any real analysis of cumulative impacts.

Based on information from the County of San Bernardino, Mr. Cashen found numerous reasonably foreseeable future projects in the Project area, including the Seneca Solar Project, the Dukomo Development and the Silverado Power-Victor Dry Farm Ranch Project.¹¹⁰ In addition, there are numerous past and present projects in the area, including residential and commercial developments, roads, transmission lines and the Victor substation.¹¹¹ In Mr. Cashen's opinion, these past, present and reasonably foreseeable future projects, in conjunction with the Project, may cause significant cumulative impacts to sensitive biological resources, including the burrowing owl, desert tortoise, special-status plants and jurisdictional waters.¹¹²

Substantial evidence supports a fair argument that the Project may result in significant cumulative impacts to biological resources. The MND completely fails to disclose these impacts. The City must prepare an EIR that discloses, analyzes and mitigates potentially significant cumulative impacts to biological resources.

¹⁰⁸ MND, p. 78.

¹⁰⁹ **Attachment A**, pp. 6-7.

¹¹⁰ *Id.*, p. 7.

¹¹¹ *Id.*

¹¹² *Id.*

C. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant, Unmitigated Impacts from Project Disturbance of Hazardous Materials

The MND states that the Project will not result in significant impacts from hazards or hazardous materials.¹¹³ The MND's conclusion is completely unsupported. As explained above, a Phase I ESA has not been prepared for the Project site, although a Phase I ESA is typically used to establish the environmental setting against which to evaluate a project's potentially significant impacts from hazards and hazardous materials. A Phase I ESA identifies the presence, or potential release, of hazardous substances or petroleum products in the ground, groundwater or surface water of a property (i.e. recognized environmental conditions or RECs). A Phase I ESA is crucial to evaluating a Project's potentially significant impacts as a result of RECs. A Phase I ESA was not conducted for the Project. Therefore, there is no support for the MND's conclusion that the Project will not result in significant impacts from hazards or hazardous materials.

Further, Mr. Hagemann identified potential RECs on the Project site. In his comments, Mr. Hagemann provides recent Google Earth imagery that shows debris piles scattered adjacent to the Project site. The MND states that the Project site itself has been used for "illegal dumping of residential and commercial waste,"¹¹⁴ but does not describe the debris or any chemical releases that may have occurred on the Project site, including petroleum compounds, chemicals, lead from discarded batteries or asbestos materials from building debris. Mr. Hagemann explains that debris containing hazardous materials would result in a potentially significant risk to construction worker and public health.

Project construction includes ground-disturbing activities, such as grading and clearing. Mr. Hagemann explains that these activities may disturb the debris, causing a release of hazardous compounds. Construction workers may be exposed to these hazardous compounds through inhalation or dermal contact. In addition, nearby residents may be exposed to these hazardous compounds through inhalation of contaminated soils when soils are disturbed during Project construction.¹¹⁵

¹¹³ MND, p. 58.

¹¹⁴ *Id.*, p. 39.

¹¹⁵ Attachment B, p. 3.

A Phase I ESA must be prepared which includes a thorough description of the Project site, including all past uses of the site that may result in current hazardous conditions. If Project site soils appear to be contaminated from trash dumping, soil samples should be collected and compared to appropriate regulatory thresholds, including the Department of Toxic Substances Control California Human Health Screening Levels and the Regional Water Quality Control Board Environmental Screening Levels. If sample results exceed the screening thresholds, a human health risk assessment should be prepared to analyze the Project's health impacts on construction workers and nearby residents from hazardous materials present on the Project site. The Phase I ESA and any sampling results must be included in an EIR that is circulated for public review and comment.

D. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant, Unmitigated Land Use Impacts

CEQA requires an assessment of any inconsistencies between the Project and applicable land use plans.¹¹⁶ A significant impact on land use and planning would occur if the Project would “[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.”¹¹⁷ Here, the Project conflicts with several goals and policies of the City's General Plan that are intended to avoid or mitigate environmental effects in the City. These inconsistencies are significant impacts that must be disclosed, analyzed and mitigated in an EIR.

1. *The Project is Inconsistent with the City's General Plan and the MND Fails to Disclose and Mitigate the Project's Inconsistencies with the City's General Plan*

Under California law, a general plan serves as a “charter for future development”¹¹⁸, and embodies “fundamental land use decisions that guide the future growth and development of cities and counties.”¹¹⁹ The general plan has

¹¹⁶ CEQA Guidelines § 15125(a), (d).

¹¹⁷ CEQA Guidelines Appendix G § IX(b).

¹¹⁸ *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 54.

¹¹⁹ *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532.

been aptly described as “the constitution for all future developments” within a city or county.¹²⁰ Further, the “propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.”¹²¹ The consistency doctrine has been described as the “linchpin of California’s land use and development laws; it is the principle which infuses the concept of planned growth with the force of law.”¹²²

The MND fails to acknowledge the Project’s conflicts with a number of the goals and policies of the City’s General Plan adopted for the purpose of avoiding or mitigating an environmental effect. These inconsistencies are potentially significant environmental impacts that must be disclosed, analyzed and mitigated in an EIR. The following are examples of these inconsistencies:

a. The Project is Inconsistent with Policy LU 1.5

Policy LU 1.5 is to “[p]rotect environmentally unique and fragile areas such as bluffs, Joshua Tree woodland, the Mojave River Corridor and sensitive wildlife habitat areas.” The Project is inconsistent with Policy LU 1.5 because, as described above, substantial evidence supports a fair argument that the Project may result in potentially significant impacts to Joshua Tree woodland. Because this policy was adopted for the purpose of avoiding impacts on Joshua Tree woodland, the City must not only address this inconsistency as part of its land use approval, but must also prepare an EIR that discloses, analyzes and mitigates the Project’s potentially significant impacts due to this inconsistency with Policy LU 1.5.

b. The Project is Inconsistent with Implementation Strategy LU 1.1.2

Implementation Strategy LU 1.1.2 is to “[r]equire the preservation and relocation of endangered plants and animals which may be in jeopardy to increased development activity.” The Project is inconsistent with Implementation Strategy LU 1.1.2 because, as described above, substantial evidence supports a fair argument that the Project may significantly impact several special status species, including the burrowing owl, desert tortoise and special status plants, among other sensitive

¹²⁰ *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1334, 1335.

¹²¹ *Citizens of Goleta Valley v. Board of Supervisors of County of Santa Barbara* (1990) 52 Cal.3d 553, 570.

¹²² *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994.
3044-003cv

species. The MND does not require the preservation or relocation of these species. Because this policy was adopted for the purpose of avoiding impacts on endangered plants and animals, the City must not only address this inconsistency as part of its land use approval, but must also prepare an EIR that discloses the Project's potentially significant impacts due to this inconsistency with Implementation Strategy LU 1.1.2.

c. The Project is Inconsistent with Goal BIO 1

Goal BIO 1 is “[t]o protect and conserve its natural, cultural and historic resources to the greatest extent possible.” The Project is inconsistent with Goal BIO 1 because, as described above, substantial evidence supports a fair argument that the Project may significantly impact biological resources. Therefore, the Project would not “protect” or “conserve” the resources. Because this policy was adopted for the purpose of avoiding impacts on natural resources, the City must not only address this inconsistency as part of its land use approval, but must also prepare an EIR that discloses the Project's potentially significant impacts due to this inconsistency with Goal BIO 1.

d. The Project is Inconsistent with Goal BIO 2

Goal BIO 2 is “[t]o assure adequate protection and conservation of all native vegetation and wildlife habitats within the Planning Area.” The Project is inconsistent with Goal BIO 2 because, as described above, substantial evidence supports a fair argument that the Project may significantly impact native vegetation and habitat. Therefore, the Project would not “protect” or “conserve” these resources. Because this policy was adopted for the purpose of avoiding impacts on native vegetation and wildlife habitats, the City must not only address this inconsistency as part of its land use approval, but must also prepare an EIR that discloses the Project's potentially significant impacts due to this inconsistency with Goal BIO 2.

e. The Project is Inconsistent with Policy WQ 1.2

Policy WQ 1.2 is “[t]he City will study the use of alternative water resources such as reclaimed water for irrigation of parks, recreational, industrial, residential, and other urban uses within the City.” The Project is inconsistent with WQ 1.2 because the Project will use groundwater from the Alto Subarea of the Mojave River Groundwater Basin (which is in overdraft) and imported State Water Project

supplies.¹²³ There is no evidence that the City considered alternative water resources, such as reclaimed water, for the Project. Because this policy was adopted for the purpose of avoiding impacts on water resources, the City must not only address this inconsistency as part of its land use approval, but must also disclose the Project's potentially significant impacts due to this inconsistency with Policy WQ 1.2 in an EIR.

V. CONCLUSION

The MND is inadequate because it fails to include a complete and accurate Project description, set forth the existing environmental setting, and identify and mitigate the Project's potentially significant impacts from hazardous materials, and on public health, biological resources and land use. Due to these significant deficiencies, the City cannot conclude that the Project's potentially significant impacts have been mitigated to a less than significant level.

The CEQA Guidelines require that an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.¹²⁴ As discussed in detail above, there is substantial evidence that the Project may result in significant adverse and unmitigated impacts that were not identified in the MND.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing an EIR to address the potentially significant impacts explained in this comment letter and the attached letters. By complying with State law, the City and the public can ensure that the Project's significant environmental impacts are mitigated to a less than significant level.

Sincerely,



Rachael E. Koss

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Attachments

¹²³ MND, p. 76.

¹²⁴ CEQA Guidelines § 15063(b)(1).
3044-003cv